

1 UNITED STATES BANKRUPTCY COURT
 2 DISTRICT OF NEVADA
 3 LAS VEGAS, NEVADA
 In re: USA COMMERCIAL MORTGAGE) E-Filed: 11/27/06
 4 COMPANY,)
 Debtor.) Case No.
) BK-S-06-10725-LBR
 5) Chapter 11

PARTIAL TRANSCRIPT OF PROCEEDINGS
 OF
 JUDGE'S RULING ON DOCKET NO. 1661
 ON
 OMNIBUS OBJECTION TO CLAIM OF IN THE AMOUNT, NO. 1244
 AND
 OBJECTION TO CLAIM OF IN THE AMOUNT, NO. 1191
 AND
 MOTION TO AUTHORIZE DEBTOR, USA COMMERCIAL MORTGAGE COMPANY,
 AS LOAN SERVICER TO APPROVE LOAN MODIFICATION
 FOR PALM HARBOR ONE LOAN,
 TO PROVIDE THE PREVIOUSLY-AUTHORIZED SUBORDINATION
 OF THE MARLTON SQUARE 2ND LOAN IN CONNECTION
 WITH THE PAYOFF OF THE MARLTON SQUARE 1ST LOAN,
 TO AUTHORIZE A SHORT-TERM FORBEARANCE
 FOR THE MARLTON SQUARE 1ST LOAN,
 AND TO GENERALLY AUTHORIZE SHORT-TERM LOAN FORBEARANCES
 AND FULL RELEASES AND RECONVEYANCES
 FOR LOANS PAID OFF IN FULL, NO. 1448
 AND
 MOTION FOR ORDER APPROVING CONTINUED USE OF CASH
 THROUGH JANUARY 31, 2007,
 PURSUANT TO FOURTH REVISED BUDGET, NO. 1452
 AND
 ORDER SHORTENING TIME RE: MOTION TO EXCLUDE DEBTORS
 FROM HAVING TO FILE INTERCOMPANY CLAIMS
 AGAINST EACH OTHER BY THE BAR DATE,
 OR, ALTERNATIVELY,
 FOR THE APPROVAL OF THE IMMEDIATE APPOINTMENT
 OF SPECIAL COUNSEL
 TO FILE AND PURSUE THE INTERCOMPANY DEBTOR CLAIMS, NO. 1519
 AND
 MOTION TO CONVERT CASE TO CHAPTER 7, NO. 1661
 VOLUME 1
 BEFORE THE HONORABLE LINDA B. RIEGLE
 UNITED STATES BANKRUPTCY JUDGE
 Monday, October 30, 2006
 10:30 a.m.
 Court Recorder: Cathy Shim
 Proceedings recorded by electronic sound recording;
 transcript produced by transcription service.

1 APPEARANCES:

2 For the Debtor and LENARD E. SCHWARTZER, ESQ.
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8 For the First Trust EVE H. KARASIK, ESQ.
9 Deed Fund Committee: Stutman, Treister & Glatt, P.C.
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11 CANDACE C. CARLYON, ESQ.
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14 For The Canepa Group: LAUREL E. DAVIS, ESQ.
15 Lionel, Sawyer & Collins
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17 For the Direct GREGORY E. GARMAN, ESQ.
18 Lenders Committee: Gordon & Silver, Ltd.
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20 For Diversified Trust ANNE M. LORADITCH, ESQ.
21 Deed Fund Committee: Beckley Singleton, Chtd.
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22 For Drs. Alexander ROBERT C. LePOME, ESQ.
23 and Others: Law Offices of Robert C. LePome
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1 APPEARANCES (Cont.)

2 For The MacDonald Center JEFFREY L. HARTMAN, ESQ.
3 for Arts and Hartman & Hartman
4 Humanities: 510 West Plumb Lane
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5 For the Official ROB CHARLES, JR., ESQ.
6 Unsecured Creditors Lewis and Roca, LLP
Committee: 3993 Howard Hughes Parkway
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7 Las Vegas, Nevada 89109

8 For the United States AUGUST B. LANDIS, ESQ.
9 Trustee: Office of the United States Trustee
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10 Las Vegas, Nevada 89101

11 Also Present: DON MARKER (phonetic)
12 Committee Chair
Unsecured Creditors Committee

1 (Court previously convened at 10:44:43 a.m.)

2 (Partial transcript of Judge's ruling
3 on Motion to Convert at 11:44:24 a.m.)

4 THE COURT: Okay.

5 (Colloquy not on the record.)

6 THE COURT: I'm going to deny the motion. To say
7 that this case is unusual is the epitome of understatement.
8 Now, while there are five separate debtors, each debtor is
9 intertwined with the other as it relates to the scheme that
10 was carried out, and that scheme was to raise money from
11 investors and lend it to others. In some cases, those
12 others were insiders.

13 So even though we're talking about five separate
14 debtors, I'm going to for the most part refer collectively
15 to the motion, rather than going through the analysis as to
16 each debtor.

17 Now, it's important to correct the facts that the
18 U.S. Trustee laid out -- and I guess "correct" is the wrong
19 word, too -- to put the correct spin on the facts, rather
20 than the spin the U.S. Trustee puts on the facts and to
21 review the facts of this case.

22 To me, perhaps, the most important case -- and I'll get
23 back to why it's the most important case -- is that the
24 debtors are operating under a de facto trustee.

25 Prior management has no role. Mr. Allison and Mesirow

1 are turnaround professionals retained in this case to
2 operate the debtors.

3 That was done by a motion, and the U.S. Trustee did not
4 object to the retention of a chief restructuring officer as
5 opposed to demanding a conversion or a Chapter 11 Trustee.

6 This is not a case in which there is no committee or
7 that the committees are inactive. Rather, the
8 U.S. Trustee's Office appointed not one committee, but four.
9 Each of those committees is active and have taken an active
10 role in all matters.

11 Next is the unusual nature of the businesses, and I use
12 the term "businesses" lightly I guess. It's interesting. I
13 had a typo here. I called it USCAM (phonetic), and that
14 probably is an appropriate acronym.

15 But Commercial Mortgage -- and I'm going to refer to
16 the servicing company as Commercial Mortgage. I think
17 that's the easiest.

18 Commercial Mortgage is a servicing business. It
19 serviced only the loans that were originated by it, so it
20 did not act as a servicer open to anyone who had loans, and
21 the two funds have never had any business, except owning
22 loans brokered by Commercial Mortgage.

23 Capital Realty was the manager of the two funds, and
24 now Mr. Allison is the manager, and the broker just brokered
25 some of the SEC funds.

1 So it's not your typical company that, for example,
2 manufactures things. It's not a company that operates a
3 restaurant. It's not a company even like a Countrywide that
4 services loans that it may originate or has loans sold to
5 it.

6 Even Commercial Mortgage has few creditors in the
7 traditional sense. Rather, the bulk of its creditors will
8 be those who had lent money to borrowers, but did not
9 receive the repayment for those loans that were repaid.

10 Now, importantly, Commercial Mortgage brokered loans
11 with numerous investors from around the nation; hence, any
12 particular loan may have more than 100 and in some cases
13 hundreds of investors.

14 So, for example -- and I'm looking at the loan report
15 attached to the disclosure statement -- BarUSA had 221
16 lenders; Bay Pompano, 407; Brookmere/Matteson, 229. Even
17 with loans with far fewer people, you have 50 investors.

18 Now, also, any particular investor may also be a lender
19 in several loans and/or may be a member of one of the funds,
20 and complicating matters further was that neither fund was
21 the only investor in a number of loans.

22 Now, also, let's talk about the kind of loans we're
23 talking about. All of us here realize that, but I think
24 it's important to reiterate.

25 These are not loans made on my house or your house or

1 Joe Blow's house where you just file a notice of breach and
2 election to sell, and the money comes in.

3 These were for the most part development loans or
4 construction loans, and they're not in insignificant
5 amounts.

6 The smallest loan I see even then is Redwood Properties
7 at 269. These are loans 12,000,000, 10,000,000, 30,000,000,
8 13,000,000, 16,000,000, 28,000,000. They're from all over
9 the United States.

10 They would naturally involve sophisticated borrowers
11 and/or I suppose on the worst-case basis borrowers whose
12 intent was to get money and never pay it back.

13 Now, while everyone regularly received payments on the
14 loans that they had made and/or payments on account of their
15 membership interest, the truth as now discovered by
16 Mr. Allison is that the majority of the loans were
17 nonperforming.

18 That is the money that came in and was used to pay the
19 lenders on the nonperforming loans came from service fees or
20 the repayment of loans that was due to others.

21 As Mr. Allison has now discovered, prior management
22 took little or no action to collect loans and was very
23 sloppy and/or negligent and/or intentionally didn't get
24 appropriate documentation or collateralization on some
25 loans. The music stopped with the investigation by the SEC

1 in the Nevada Mortgage Division.

2 Now, during the case, it's been apparent from the very
3 first day that the debtor could not and would not engage in
4 the business of brokering new loans.

5 Again, the business of the funds was merely owning
6 loans. It was apparent from the first day that the funds
7 would not get new investors.

8 From the outset, it's been apparent that no new moneys
9 would come in, other than new moneys by meaning new loans,
10 new investors.

11 Rather, funds would come from the sale of the servicing
12 business, collection of the loans, and the sale of the
13 loans.

14 It is obvious that this case was one that bankruptcy
15 was a unique solution to a terrible problem, a way to
16 orderly liquidate the assets, pursue positive actions, see
17 that the direct lenders had a mechanism to collect on their
18 loans, and to pay the equity holders -- that is the fund
19 members -- and to the extent there is creditors the
20 creditors.

21 Now, Mr. Allison contrary to the implications of the
22 U.S. Trustee in the pleadings did obtain DIP,
23 debtor-in-possession financing.

24 But I believed that it was not -- and the U.S. Trustee
25 opposed the motion as well I believe -- that this was not in

1 the best interest of the estate due to potential problems
2 upon default, and I didn't approve the financing.

3 Perhaps, I should have. I don't know what difference
4 it would have -- I mean, I'm not sure what the difference
5 would have been, the distinction, but that wasn't
6 Mr. Allison's -- he obtained the debtor-in-possession
7 financing.

8 But despite the lack of infusion of new funds from
9 financing, he has continued to service the loans, and, more
10 importantly -- and I'll talk about this more -- he has made
11 significant progress in collecting on the loans.

12 Now, the U.S. Trustee makes much of the fact that
13 Mr. Allison didn't get the debtor-in-possession financing,
14 and that was a continuing loss and shows that he couldn't do
15 it. Why didn't he make the motion then? Why wait until we
16 incurred \$6,000,000 in fees?

17 Now, while the U.S. Trustee makes a lot of the fact
18 that a plan was not filed within the original exclusivity
19 period, the fact is that a plan has been filed, and, most
20 importantly, it's been done with the extensive cooperation
21 and negotiation of the committees. Moreover, given the
22 extensive problems in this case, the time in which a plan
23 was filed was exceedingly short.

24 Now, the U.S. Trustee says it takes the position that
25 all liquidating plans aren't permitted, but I don't think

1 that follows.

2 It seems to me that any liquidating plan under their
3 interpretation could never be allowed because there's not
4 new money coming in. It's a liquidation of the old assets.

5 I mean, I guess there could be a rare case where you
6 have a business that operates for a very short period of
7 time making widgets. It makes widgets for a short while,
8 and then it stops business and sells the business.

9 But I believe the U.S. Trustee's real position is
10 liquidating plans are not allowed. And if that's the case,
11 again, why, and it's a mystery to me.

12 And if it believes that it has to make the motion and
13 if it believes it must be granted, why wait now until
14 professionals have in good faith incurred fees doing the
15 work, doing the negotiations, Mr. Mesirow taking all the
16 time to put the loans together, working extensively, and the
17 various constituencies? Why has it waited this long to make
18 the motion?

19 I can't believe it was intended to chill the bidding.
20 I don't want to put that implication on the U.S. Trustee's
21 Office.

22 But, clearly, that would have been the result and may
23 still because this notice went out to 4,000 people
24 notwithstanding the order on the bidding which has yet to go
25 out, and he did not ask to shorten the time to hear the

1 motion.

2 And to suggest that the motion is filed the day without
3 consultation with anyone, the day before the sale motion set
4 for seven days before the bidding end, to suggest that that
5 was just done because, oh, we thought we had to and to
6 suggest that that's the way it gets decided is beyond
7 comprehension to me.

8 Now, let's apply the facts to the statute here.
9 Question of standing, now, I do find it understanding that
10 the U.S. Trustee was deleted from Section 1112 as to who may
11 bring the motion.

12 But I do agree with Mr. Landis that since 307 gives the
13 trustee general standing and 28, USC, Section 586
14 contemplates the U.S. Trustee is to file the motion I find I
15 do have standing.

16 Now, the more complicated issue is how in the world
17 does one read Section (b)(1) of 1112. Does it mean -- and
18 I'm going to have to read this for the record, so bear with
19 me. For those of you that have the code, you can read
20 along, obviously.

21 It says, "Except as provided in paragraph 2 of this
22 subsection, Subsection C of this section, and
23 Section 1104(a)(3), on request of a party in interest and
24 after notice of the hearing absent unusual circumstances
25 specifically identified by the Court that established that

1 the request of conversion or dismissal is not in the best
2 interest of creditors in the estate, the Court shall convert
3 a case to a case under this chapter to a case under
4 Chapter 7 or dismiss a case in this chapter whichever is in
5 the best interest of creditors in the estate if the movant
6 establishes cause."

7 Now, if you look at that paragraph alone, it would
8 appear to say that if they establish cause the Court still
9 has the ability to examine what the unusual circumstances
10 are of a case.

11 Paragraph 2 then provides, "The relief provided in
12 paragraph 1 shall not be granted absent unusual
13 circumstances specifically identified by the Court that
14 established that such relief is not in the best interest of
15 creditors in the estate if the debtor or another party in
16 interest objects and establishes that, A, there's a
17 reasonable likelihood that a plan will be confirmed" -- and
18 I'm shortening -- "and, B, the grounds for granting such
19 relief include any act or omission of the debtor, other than
20 under paragraph 4(a)."

21 And 4(a) is substantial or continuing loss or
22 diminution of the estate in the absence of a reasonable
23 likelihood of rehabilitation.

24 The trustee argues that if they establish 4(a) I
25 do not have any discretion to look at the unusual

1 circumstances.

2 I think that that reads too much and reads out
3 paragraph B(1). If that was the case, then paragraph B(1)
4 has absolutely no purpose in this statute and the except as
5 provided is meaningless.

6 I think that if that was the interpretation that it
7 would read as follows: B(1) would just start on request of
8 a party in interest, and then 2 deals with the 4(a).

9 So I think reading these together putting meaning to
10 both clauses the more accurate reading, the better reading,
11 is to suggest that even if they establish cause under 4(a)
12 that it's a substantial or continuing loss and the absence
13 of a reasonable likelihood of rehabilitation I can still
14 look at the unusual circumstances, but let's put that aside
15 for the moment. Let's assume that their interpretation is
16 correct.

17 The trustee has argued that rehabilitation requires
18 that the debtor is going to continue on in business. I
19 believe that is too narrow a reading of the word
20 "rehabilitation" because as I indicated that would rule out
21 liquidating plans, and we know from the code that
22 liquidating plans are permitted under 1123(b).

23 The code specifically permits debtors to liquidate by
24 selling or transferring all assets, sell or adjust claim or
25 interest, and to retain and enforce any claim or interest.

1 And, clearly, any company which is not doing new
2 business is technically losing money if one counts the fees
3 that are paid to professionals.

4 But here I think there's an important use of the word
5 "rehabilitation", and, unfortunately, every case is not the
6 manufacturer who has come upon hard times.

7 Unfortunately, some cases are cases in which businesses
8 have been operated to defraud individuals, either the
9 investors, or in the kind of case like this, direct lenders
10 or shareholders or creditors.

11 We've seen everything from Enron to whatever. And in
12 that case, a company which is operating illegally is now
13 turned around to operating legally.

14 Now, while there cannot be any new loans, the point is
15 one point that was illegal under Nevada law is that it is
16 illegal under Nevada law to make payments to individuals on
17 loans that are in default, and, clearly, that was going on.

18 That has stopped, and that's what created the situation
19 that people were left to believe that their loans were
20 performing.

21 What we had before -- and this gets also to the idea of
22 loss of assets, and I think Mr. Charles was right. These
23 two ideas are kind of integrally related.

24 What we had before is we had a smoke-and-mirror
25 business. We had paper assets. Liquidating trusts are

1 recognized, and they're valuable and useful tools in the
2 arsenal of creditors.

3 Moreover, turnaround professionals are widely and
4 commonly used to administer these complicated cases. They
5 have the experience. They have the resources.

6 One of the more successful cases in this district was
7 the AgriBioTech case where growers which originally thought
8 they would receive 20 cents on the dollar received 70 cents
9 on the dollar.

10 It was a case which was hopelessly insolvent. The
11 insiders had merged something like 50 companies in a very
12 short time.

13 By use of the liquidating plan, assets were liquidated.
14 The business did not continue. Complicated claims were
15 resolved through the plan's negotiation process, and causes
16 of action were preserved to pursue for the benefit of
17 creditors.

18 I have absolutely no doubt that if that case had been
19 administered by a trustee or converted as opposed to being
20 run by a professional turnaround manager and the qualified
21 professionals he retained that growers and other creditors
22 would have received far less.

23 Let's face it. Trustees don't have the abilities to
24 manage these complicated cases absent hiring the exact
25 person such as Mr. Mesirow that we have now.

1 Moreover, now, the U.S. Trustee says he has to do it,
2 and I recognize that's what the statute says, but there are
3 other cases in this district filed post-October 17th of '05.

4 For example, 21st Century Technologies, there is a loss
5 in the last statement of \$1,616,967. The only asset is a
6 lawsuit, and there's not been a pip made about appointing a
7 trustee or converting that case. In fact, there's a
8 liquidating plan on file right now.

9 Now, let's look at the continuing loss or diminution.
10 We've got two parts of that test if we assume that applies.
11 The test is that grounds for relief there's a substantial or
12 continuing loss to or diminution of the estate and absence
13 of a reasonable likelihood of rehabilitation.

14 What does a loss mean in a case like this? Yeah. I
15 don't think you can look at the professional fees because in
16 every case you've got professional fees.

17 And, again, was the U.S. Trustee setting everybody up
18 by appointing four committees, letting them incur \$6,000,000
19 in fees, and then being quiet until the end? Because as we
20 know, Chapter 7 fees are paid before Chapter 11 fees.

21 Here servicing fees are sufficient to pay the
22 operations of collecting the loans. The funds are not
23 losing money. They've got the same number of loans, and,
24 indeed, more money has been collected and monetized because
25 of Mr. Allison's efforts.

1 Now, the U.S. Trustee sort of like Ms. Chubb has a
2 tendency to do is trying to stir the crowd by talking about
3 the fees affecting creditors. It doesn't affect the direct
4 lenders.

5 Those fees come out of the servicing fees, and the only
6 persons who could complain is Mr. Charles' constituency as
7 the unsecured creditors.

8 So there are not fewer assets by use of the servicing
9 fees to pay the direct lenders or the fund members because
10 the funds get their loans.

11 Now, as I have said, I believe B(1) applied, so that I
12 look even if you assume cause. Even, again, if I say, okay,
13 there is a cause, that even if they have established cause,
14 I think under B(1) I can look at unusual circumstances to
15 determine that it's not appropriate to convert or dismiss.

16 Now, in addition to the facts that I have laid out, the
17 unusual circumstances include the devastating effect of
18 conversion.

19 And just as a doctor is to do no harm, presumably, the
20 U.S. Trustee should govern his actions in the same manner.
21 To convert this case would be devastating.

22 First, one can assume the U.S. Trustee would appoint
23 five trustees. The U.S. Trustee has already argued there's
24 conflicts.

25 And to now suggest the case can be substantively

1 consolidated and so we only have one trustee I find is an
2 absolute hypocrisy.

3 We have issues of interparty claims which may come up
4 and require the appointment of different counsel in these
5 cases.

6 But we also have the claims process by which the
7 parties are working this out through negotiations and the
8 plan process.

9 That plan process has the advantage. One big advantage
10 is the plan process would have a mechanism by which causes
11 of action that may belong to an individual direct lender
12 could be assigned to the estate and pursued for the benefit
13 of everyone.

14 One of the prime things that happened in the
15 AgriBioTech was that the causes of actions that the growers
16 had against lenders and others was assigned to the estate in
17 a manner which stood challenges of standing.

18 A Chapter 7 Trustee can't do that, and there's no
19 mechanism by which a Chapter 7 Trustee I don't think get
20 assigned the causes of action.

21 What would that mean? That means each direct lender
22 would be left to go fend, to go sue, himself against the
23 insiders in the case.

24 This is not a case in which -- and it's probably akin
25 to the standing cases that suggest that the trustee cannot

1 pursue actions that belong to shareholders, but the plan
2 mechanism provides a mechanism for this.

3 Now, it's true the committees would cease to exist, but
4 the expenses of five separate trustees and the cost of those
5 professionals would far outweigh the remaining work of the
6 committees.

7 Because there are five trustees, they each sue each
8 other. More importantly, each of the direct lenders would
9 be probably sued as well, and they would probably sue.

10 Finally, each trustee would be presumably because of
11 certain other amendments to BAPCPA which is what I like to
12 call it be entitled to a commission of three percent
13 regardless of the work accomplished. The U.S. Trustee never
14 mentions that in his motion.

15 It is possible, too, that the trustees could argue that
16 three percent would be on top of the servicing fees to
17 direct lenders because commissions are paid on moneys
18 distributed to parties in interest.

19 I think a trustee could make a straight face that the
20 trustee would be entitled to not only servicing fees, but
21 three percent of what is paid over to direct lenders.

22 Also, the trustee is entitled to his percentage even if
23 all the funds go to other professionals. That's again
24 something the U.S. Trustee has failed to point out.

25 And, indeed, what troubles me in a lot of the cases in

1 this district is that while we say that there are a lot of
2 asset cases most of the assets go to the professionals and
3 not so much to the unsecured creditors.

4 I'm not suggesting that there's anything wrong with
5 that because in a lot of cases you've got to pursue an
6 action to see if there's something there, but the reality is
7 the fees -- a lot of those cases, Saxton, for example, is
8 administratively insolvent.

9 Now, importantly, it's doubtful that a buyer could be
10 found. It's easy for the U.S. Trustee to say, oh, the
11 Chapter 7 Trustee could find a buyer.

12 You've got a sophisticated issue here. You don't have
13 even something I guess, arguably, simple like the sale of a
14 factory. You've got a portfolio and a servicing business.

15 The current sale proposal depends upon a plan, and the
16 plan-confirmation process is invaluable to achieve top
17 dollar because it gives a buyer confidence that it can't
18 obtain through a liquidation by a Chapter 7 Trustee fire
19 sale or not.

20 It's doubtful that the trustee would continue to
21 service the loans. As noted at the prior hearing, the
22 servicing business is only valuable as an adjunct to the
23 sale of the fund assets, so you'd lose the additional
24 servicing fees.

25 And how would you collect the servicing fees and the

1 exit fees that are due on these loans that if they're ever
2 finally paid?

3 So it's likely a trustee would reject all the contracts
4 and leave the direct lenders on their own. The result of
5 this is that borrowers would have no one to receive payment
6 on performing loans. If I have a performing loan, who am I
7 going to pay?

8 And while the lenders may seek another servicer, that
9 requires action by 51 percent of each loan, and some
10 servicers may be out there, but it requires a collective
11 effort. It's a difficult situation.

12 It also would give borrowers who needed a nudge to pay
13 a reason not to pay. They could sit back and wait until
14 somebody files an action either to foreclose, either
15 judicially or otherwise.

16 Again, how can that be accomplished with all the
17 numerosity of borrowers and the different kinds of
18 borrowers?

19 We contrast that to the collection efforts that have
20 been done by Mr. Allison and the negotiations that he has
21 made with borrowers.

22 Let's even assume that we have a trustee that comes in
23 and is familiar with this kind of thing. He would have to
24 start afresh.

25 Do you think the borrower he's talking to would come

1 back with the last offer he gave Mr. Allison? Of course
2 not. The borrower would come back with his bottom-line
3 first offer because all bets are off.

4 Now, while the Court -- and what's interesting, too,
5 about this case and makes this case more difficult is that
6 while the Court is given an out under 1104(a)(3) to
7 converting or dismissing by appointing a trustee -- and
8 that's going to cover most of the cases -- here we have a
9 de facto trustee.

10 We really have what Mr. Landis says he wants unless he
11 wants somebody I guess that's directly under his authority.
12 This just doesn't fit within what 1112 says or was meant to
13 say.

14 It's clear that congress was concerned about debtors
15 who go in and stay in Chapter 11 with nothing but hopes and
16 dreams and schemes who merely want to delay their creditors
17 while they collect their salaries and pay off trust-fund
18 taxes, but that's not this case.

19 This case is going to depend upon the ability to get a
20 plan that covers all the issues. This is a case which needs
21 a comprehensive plan and not scattered actions to deal with
22 all its problems.

23 As I have said, it's not a case which was intended
24 to or falls within the parameters of amended 1112. All
25 right.

1 Let's take about a 15-minute recess, and then we'll
2 finish up with the other matters.

3 MS. CARLYON: On this matter, your Honor, given
4 the delicate situation that we're in vis-a-vis a sale, it
5 would be our request that the order denying the motion be a
6 simple order entered immediately, and that the U.S. Trustee
7 cause that to be served on the people that received the
8 original notice.

9 THE COURT: Yes. I'll make my oral findings and
10 conclusions on the record, and that's not to say that I may
11 ultimately publish this as a memorandum, but it certainly
12 won't change any of the result.

13 And so I make my oral findings and conclusions on the
14 record, and I guess if anybody -- certainly, you could use
15 the transcript if anybody wants the opinion to be published.
16 All right.

17 Well, let's take about a 15-minute recess. And, of
18 course, (indiscernible) the U.S. Trustee does it or BNC, so
19 you'll have to notice the order to everyone.

20 MS. CARLYON: Thank you, your Honor.

21 THE CLERK: All rise.

22 (Recess at 12:13:43 p.m.)

23 (Thereupon, the portion requested to be transcribed
24 was concluded.)
25

1 I certify that the foregoing is a correct transcript
2 from the electronic sound recording of the proceedings in
3 the above-entitled matter.

4
5
6 /s/ Lisa L. Cline

11/27/06

7 Lisa L. Cline, Transcriptionist

Date